

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KATHLEEN BROWN,	)	CIVIL ACTION
	)	
Plaintiff	)	NO. 03-224E
	)	
Vs.	)	
	)	
COST COMPANY,	)	
	)	
Defendant	)	

**MOTION TO STRIKE PLAINTIFF'S MOTION  
FOR NEW TRIAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59**

AND NOW, comes Defendant, COST COMPANY ("Cost"), by and through its attorneys, LUTZ & PAWK, and MICHAEL J. PAWK, ESQUIRE, and files this Motion to Strike Motion for New Trial Pursuant to Federal Rule of Civil Procedure 59 and, in support thereof, avers as follows:

1. On or about June 24, 2005, Plaintiff filed a Motion for New Trial Pursuant to F.R.C.P. 59. Plaintiff did not file a Brief in Support of her Motion.
2. On or about July 21, 2005, Defendant, Cost, filed a Response to Plaintiff's Motion for New Trial.
3. By Order of Court dated August 10, 2005, this Court directed the Plaintiff to file her Brief in Support of her Motion for New Trial within 14 days of the filing of the trial transcript.
4. The trial transcript was filed on October 17, 2005, therefore, Plaintiff's Brief was due on or before October 31, 2005.

5. On October 28, 2005, Plaintiff filed a Motion for Fifteen-Day Enlargement of Time in which to File Brief in Support of Amended Motion for New Trial.

6. On or about October 31, 2005, this Court granted Plaintiff's Motion and by Order of Court indicated that Plaintiff's Brief was due on or before November 14, 2005.

7. As of today's date, November 16, 2005, Plaintiff has failed to file its Brief in Support of its Motion for New Trial.

8. Plaintiff has not filed any further Motions to Enlarge Time to file Brief in Support of Motion for New Trial.

9. Plaintiff has had ample time from June 24, 2005, in which to prepare a Brief in Support of her Motion for New Trial.

10. Any further delay in these proceedings would unduly prejudice the Defendant, Cost, the verdict winner at trial.

11. Accordingly, Defendant, Cost, respectfully requests that this Court issue an Order striking Plaintiff's Motion for New Trial. In the alternative, Defendant, Cost, respectfully requests that this Court issue an Order declaring that any Brief filed by Plaintiff subsequent to November 14, 2005, be stricken.

WHEREFORE, Defendant, COST COMPANY, respectfully requests that this Honorable Court strike Plaintiff's Motion for New Trial and/or order that any Briefs filed subsequent to November 14, 2005 be stricken.

Respectfully submitted,

LUTZ & PAWK

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Attorney for Defendant  
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	)	
Defendant	)	

**ORDER OF COURT**

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_ 2005, it is hereby Ordered, Adjudged and Decreed that upon consideration of Defendant's Motion to Strike Plaintiff's Motion for New Trial, the Motion is GRANTED, and Plaintiff's Motion for New Trial is hereby stricken. It is further Ordered that any Brief filed by Plaintiff after November 14, 2005, is stricken and will not be considered by this Court.

BY THE COURT,

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The Honorable Sean J. McLaughlin

**CERTIFICATE OF SERVICE**

I, **MICHAEL J. PAWK, ESQUIRE**, hereby certify that a true and correct copy of the foregoing **MOTION TO STRIKE PLAINTIFF'S MOTION FOR NEW TRIAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59** was served on the following on this the 16<sup>TH</sup> day of November 2005, **VIA REGULAR, FIRST-CLASS MAIL:**

Richard S. Matesic, Esq.  
Attorney at Law  
1007 Mount Royal Blvd.  
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